



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0295]

RIN 1625-AA00

Safety Zones; Shell Arctic Drilling/Exploration Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones around the POLAR PIONEER and NOBLE DISCOVERER, two vessels associated with Royal Dutch Shell's (Shell) Arctic oil drilling and exploration operations, as well as any vessel actively engaged in towing or escorting those vessels, while they are located in the U.S. Territorial and Internal Waters of the Sector Puget Sound Captain of the Port Zone. The safety zones created by this rule are necessary to ensure the mutual safety of all waterways users including the specified vessels and those individuals that may desire to exercise their First Amendment rights relating to Shell's Arctic oil drilling and exploration operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2015. For the purposes of enforcement, actual notice will be used from the date the rule was signed, October 23, 2015, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2015-0295 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Kate Haseley, Waterways Management Division, U.S. Coast Guard Sector Puget Sound; telephone (206) 217-6051, e-mail SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NPRM	Notice of proposed rulemaking
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable as the vessels at issue will be arriving in late October and a safety zone is needed at that time to help ensure the safety of all waterway users.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For reasons identical to those described above, delaying the effective date until 30 days after publication would be

impracticable since the regulation is immediately necessary to help ensure the safety of all waterway users.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish limited access areas is: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1. POLAR PIONEER and NOBLE DISCOVERER are Shell contracted vessels that are returning to the Puget Sound region as a part of demobilizing from oil drilling and exploration operations in the Arctic over the spring and summer of 2015. In the spring of 2015 a significant amount of First Amendment activity related to Shell's arctic activities took place in both Washington and Oregon and such activity may occur again when the vessels are in the Puget Sound. The previous First Amendment activity included the unauthorized boarding of a Shell contracted vessel on the high seas by Greenpeace members, the formation of a "kayak flotilla" in the Puget Sound to advocate against Shell's operations in the region including an attempt to block POLAR PIONEER from leaving Seattle, Washington, and the use of a "kayak flotilla" as well as Greenpeace members hanging from a bridge in Portland, Oregon to prevent another Shell contracted vessel from departing. Draft restrictions, vessel maneuvering characteristics, and geographic/environmental conditions may constrain the ability of large commercial vessels, like the POLAR PIONEER and NOBLE DISCOVERER, to maneuver in close quarters with other vessels, particularly small craft piloted by recreational operators. Intentional close-in interaction of these vessels will create an increased risk of collision, grounding, or personal injury for all parties. This safety risk to all parties and the port itself is best addressed by mandating a minimum zone of separation. For these reasons, the Coast Guard believes that safety zones around the POLAR PIONEER and NOBLE DISCOVERER, as well as

any vessel actively engaged in towing or escorting those vessels, are necessary to ensure the safety of all waterways users.

IV. Discussion of the Rule

In this rule, the Coast Guard is establishing safety zones around the Shell contracted vessels POLAR PIONEER and NOBLE DISCOVERER, as well as any vessel actively engaged in towing or escorting those vessels. The safety zones are established in subsection (a) of this temporary regulation. Per subsection (a)(1), while transiting, the safety zone around each of the vessels will encompass all waters within 500 yards of the vessels in all directions from those vessels and any other vessel actively engaged in towing or escorting those vessels. Persons and/or vessels that desire to enter these safety zones must request permission to do so from the Captain of the Port, Puget Sound by contacting the Joint Harbor Operations Center at 206-217-6001, or the on-scene Law Enforcement patrol craft, if any, via VHF-FM CH 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is not a significant regulatory action as the safety zones are limited in both size and duration and

any person and/or vessel needing to transit through the safety zones may be allowed to do so with the permission of the Captain of the Port, Puget Sound.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the affected waterways when the safety zones are in effect. The safety zones will not have a significant economic impact on a substantial number of small entities, however, because the safety zones are limited in both size and duration and any person and/or vessel needing to transit through the safety zones may be allowed to do so with the permission of the Captain of the Port, Puget Sound.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of temporary safety zones to deal with an emergency situation that is one week or longer in duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of all individuals and supports the ability to congregate and exercise First Amendment free speech rights safely and without interfering with other maritime traffic. Of particular note, large vessels operating in restricted waters cannot maneuver freely, nor can they stop immediately. As such, any First Amendment activity taking place in immediate proximity to such vessels can quickly result in extremis. Individuals that desire to exercise their First Amendment rights are asked to do so with full regard to vessel traffic conditions and are requested to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate their activities so that their message can be

heard, without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-302 to read as follows:

§ 165.T13-302 Safety Zones; Shell Arctic Drilling/Exploration Vessels, Puget Sound, WA.

(a) Safety Zones--(1) Location. The following areas are designated as safety zones: All waters within 500 yards of the following vessels while transiting within the U.S. Territorial or Internal Waters of the Sector Puget Sound Captain of the Port Zone as defined in 33 CFR § 3.65-10: NOBLE DISCOVERER, POLAR PIONEER, and any other vessel actively engaged in towing or escorting those vessels.

(2) Regulations. In accordance with the general regulations in subpart C of this section, no persons or vessels may enter these safety zones unless authorized by the Captain of the Port, Puget Sound or his designated representative. To request permission to enter one of these safety zones contact the Joint Harbor Operations Center at 206-217-6001, or the on-scene Law Enforcement patrol craft, if any, via VHF-FM CH 16. If permission for entry into one of these safety zones is granted, vessels must proceed at a minimum speed for safe navigation and in accordance with any directions given by the Captain of the Port, Puget Sound or his designated representative.

(b) Dates. This rule will be enforced from October 23, 2015 through December 31, 2015.

Dated: October 23, 2015.

M. W. Raymond,
Captain, U.S. Coast Guard,
Captain of the Port, Puget Sound.

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